

REMARKS

Claims 2 and 8 are pending and stand rejected. Claims 2 and 8 are amended and remain pending.

Support for the claim amendments is found in the specification as originally filed. Applicants respectfully request entry of the amendments.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Applicants note with appreciation that the rejections under § 103 in the Office Action of April 3, 2008 are not repeated. For that reason, Applicants assume the rejections have been withdrawn.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112

Rejection for Written Description

Claim 2 is rejected as failing to comply with the written description requirement. Claim 2 has been amended, mooting the rejection. Applicants respectfully request the rejection be withdrawn.

Rejection for Lack of Enablement

Claims 2 and 8 are rejected because the specification is allegedly not enabling. In reply, Applicants offer the enclosed Declaration under 37 CFR § 1.132 of inventor Dr. Yu. In light of the declaration and the comments below, Applicants respectfully traverse the rejection as applied to the amended claims and request reconsideration.

Rejections for lack of enablement are properly analyzed according to various Wands factors, as presented by the Examiner in the Office Action. Applicants now discuss the Wands factors in the order presented by the Examiner.

The Nature of the Invention

The claims are directed to increasing the rate of hair growth in a dog or cat by feeding it a properly nutritious diet with about 0.5 to about 4.5 mg/kg of the diet on a

dry matter basis. Applicants submit that the nature of the invention leads to the conclusion that the invention is enabled, because the claims are limited to methods of feeding dogs or cats diets with specified ranges of selenium.

The State of the Prior Art and Predictability or Lack Thereof

Applicants respectfully submit that the low predictability in the art alleged by the Examiner with respect to treatment of poor hair growth is consistent with the novel and non-obvious nature of the claims. With respect to enablement, Applicants make the further observation that even if predictability is low, Applicants have provided adequate guidance for practicing the invention as claimed. As a result, Applicants believe that this Wands factor also supports a conclusion that the claims are enabled.

The Amount of Direction or Guidance Present and the Presence or Absence of Working Examples

Applicants submit this Wands factor also leads to the conclusion that the claims, as currently amended, are enabled. Complete guidance is provided in the specification to feed a dog or a cat a properly nutritious diet having 0.5 to 4.5 mg/kg selenium of the diet on a dry basis. A working example is also given. On that basis, the person of skill in the art is completely apprised of how to carry out the invention.

As a preliminary matter, Applicants submit that the Office Action statements on alopecia are inapt for the determination of enablement of the amended claims because the amended claims do not recite a treatment for alopecia.

The enclosed declaration addresses other concerns raised in the Office Action. The Examiner takes the position that Yu et al. (Journal of Animal Physiology and Animal Nutrition 2006 90: 146-151; hereafter “the Yu et al. reference”) on page 150 indicates that daily hair growth for beagle dogs is 0.34 to 0.4 millimeters. The Office Action further states that this is higher than any of the daily hair growth rate data set forth in Table 1 of the specification. The Office Action concludes that the example in the specification actually provides evidence that the claimed range is not effective to increase hair growth in all animals, especially dogs. In light of this conclusion, the

Examiner weighs this Wands factor in favor of a conclusion that the claims are not enabled. Dr. Yu's Declaration is offered to overcome this objection.

Declaration Under 37 C.F.R. § 1.132 of Dr. Shiguang Yu

Attention is now respectfully drawn to the enclosed Declaration of Dr. Yu and the attached exhibits. In the Declaration, Dr. Yu explains how the hair growth rates for beagles reported in the Yu et al. reference are not inconsistent with Applicants' discovery -- reflected in the current claims -- that diets having a specific level of selenium increase the rate of hair growth in dogs and cats. Dr. Yu's analysis in sections 5 through 15 of his Declaration largely parallels Applicants' remarks made through their attorneys in the amendment filed March 17, 2008. In this regard, attention is respectfully drawn to pages 12 through 15 of the March 17 amendment.

Dr. Yu demonstrates that, although a daily hair growth rate in the prior art reference was reported as higher than those listed in Table 1 of the specification, nevertheless, a person of skill in the art would recognize the reasons for the differences and would conclude that the diets fed the dogs in the current study are effective at increasing the rate of hair growth.

In section 6, Dr. Yu (the lead author of the Yu et al. reference) explains where the reported growth rates of 0.34 to 0.40 millimeters per day came from. He refers to an Al-Bagdadi thesis provided as Exhibit C.

In section 7, Dr. Yu explains that even though the growth rate in Table 1 of the specification is lower than described in the Al-Bagdadi dissertation, the conclusions reflected in the current claims are still valid. In sections 7 through 10, Dr. Yu explains many experimental differences between the current study and the prior art study. He demonstrates that all of these differences would be expected to result in different measured hair growth rates.

Sections 11 through 14 describe other differences in the Al-Bagdadi study and the significance of those differences from the current study.

Applicants respectfully submit that the facts presented in the Yu Declaration conclusively demonstrate that the specification describes an effective method of increasing the rate of hair growth in a dog or cat by feeding the animal a diet with the claimed range of selenium. With this demonstration, the conclusion is compelled that the current claims are enabled in their full scope.

For these reasons, Applicants respectfully submit that this Wands factor also favors a conclusion that the claims are enabled.

The Breadth of the Claims and the Quantity of Experimentation Needed

Applicants submit that this Wands factor also favors the conclusion that the claims are enabled. The claims are not overly-broad in light of the teaching in the specification. The claims recite methods comprising feeding a dog or a cat a diet with 0.5 to 4.5 mg selenium per kg of the diet on a dry matter basis. The claims recite, and the specification demonstrates, that feeding such a properly nutritious diet to a dog or a cat results in increasing the rate of hair growth. As discussed above for other Wands factors, the specification provides complete guidance for formulating the diets and demonstrating the increase in hair growth. No undue quantity of experimentation is needed for a person of skill in the art to practice the full scope of the claims. Applicants respectfully submit that this Wands factor also favors a conclusion that the claims are enabled.

For all the reasons discussed above, Applicants respectfully submit that the current claims as amended are enabled in their full scope, and respectfully request that the rejection under § 112 be withdrawn.

CONCLUSION

For the reasons discussed above, Applicants believe that Claims 2 and 8 as amended are in an allowable condition and respectfully request an early Notice of Allowance. The Examiner is invited to telephone the undersigned if that would be helpful in resolving any issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Donald L. Traut', written over a horizontal line.

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